IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2498 OF 2004

Sahara Airlines Limited,
a private airline company
incorporated under the
Companies Act, 1956 having its
Mumbai Main Office at S.V. Road,
Goregaon (West), Mumbai 400 104. ... Petitioner

Vs.

1. Jawaharlal U. Mishra,
C/o. Maharashtra Engineering,
Plastic & General Kamgar Union,
Mishra Niwas, Kokani Pada,
Kurar Village,
Malad (East), Mumbai 400 097.

2. The Central Government
Industrial Tribunal No. 1,
Mumbai. ... Respondents

WITH

WRIT PETITION NO. 2721 OF 2004

Sahara Airlines Limited,
a private airline company
incorporated under the
Companies Act, 1956 having its
Mumbai Main Office at S.V. Road,
Goregaon (West), Mumbai 400 104. ... Petitioner

Vs.

1. Sabhapati Yadav,
C/o. Maharashtra Engineering,
Plastic & General Kamgar Union,
Mishra Niwas, Kokani Pada,
Kurar Village,
Malad (East), Mumbai 400 097.

2. The Central Government
Industrial Tribunal No. 1,
Mumbai. ... Respondents

Mr. J.P. Cama with Ms.Sonali Kunekar i/by Haresh
Mehta & Co. for Petitioners.

Mr. P. M. Patel for Respondents.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

ORAL JUDGMENT

1. Rule. Heard forthwith.

2. Both the Petitions are being disposed of by a common order as the reference was disposed of by common order and as the facts and issues involved are more or less the same.

3. In Writ petition No. 2498 of 2004, the Respondent workman was employed with Petitioner on 2.7.1993 as driver. It is his case that on 14.6.1998 when he along with the other Petitioners were on duty, they were asked to come to the Goregaon Office where their resignation was forcibly taken by Shri. Pravin Bhardwaj and Shri. Sudhir Singh and they were informed that their services were not required by the Management. Immediately on the very same day, they approached Maharashtra Engineering Plastic General Kamgar Union who on behalf of these two workmen and another addressed a letter to the Commercial Manager dated 14.6.1998 setting out therein that they were forcefully asked to hand over their resignations. By letter of 17.7.1998 the workman was informed that resignation from the post of Transport Supervisor has been considered and resignation has been accepted by the competent authority with effect from closure of office on 14.6.1998. A demand was thereafter served on the Management by registered letter dated 22.7.1998

demanding reinstatement and continuity of service and full back wages. As that failed, the matter was taken in conciliation. On recording failure report by the Conciliation officer, the appropriate Government made independent references in respect of each of the workmen. An English translation of the order of reference dated 10.5.1999 has been handed over by the learned counsel appearing on behalf of the Petitioners. The Reference except for the name reads as under :

> "Whether the statement of Shri. Sabhapati Yadav that the Management of M/s. Sahara Airlines Ltd. has forcibly taken his resignation, is correct? If so, whether this action of Management is proper and justified? If not, what relief the workman is entitled to and from which date."

. The respondent workman filed claim statement wherein it was set out that while he was on duty, he along with two other co-workers were called in the office of the Petitioners situated at Goregaon by Mr. Pravin Bhardwaj and Mr. Sudhir Singh and their resignations were taken under force and duress by the aforesaid persons and thereafter were informed by the said two persons that their

services are not required by the Management of the company. These facts were immediately communicated by them to the company by letter dated 14.6.1998 under registered A.D. The contents of the letter has already been set out earlier. They demanded reinstatement with full backwages and continuity of service from 14.6.1998. As the Management did not respondent to the letter dated 14.6.1998, they served demand on the company by registered A.D. by letter dated 22.6.1998 again demanding reinstatement with full back wages and continuity of service. On failure, Labour Court was approached and justification statement dated 3rd August, 1998 in support of their demands was filed before the Central Labour Commissioner. The conciliation officer could not settle the matter due to adamant and non-cooperative attitude of the petitioners and as such the Reference. It was then set out that from the date of oral termination till date of filing of the written statement, the workmen were unemployed though they had tried their level best for gainful employment. Various grounds as to why they should be reinstated have been set out.

4. On behalf of the Petitioner, written statement was filed. Various preliminary objections were raised. In Paragraph 5 it was set out considering contention by the workmen that they were senior

Drivers that there was no post of senior driver. It is then set out that the workmen submitted their resignation on 14.6.1998 and the resignation came to be accepted by the company on 17.7.1998. Dealing with the averments in Para 3 of the claim statement, about taking resignation by force it was set out that this was a concocted story of forced resignation. On the contrary, it is pointed out that Shri. Pravin Bhardwaj and Shri. Sudhir Singh had asked the workman to wait till completion of the month. But the workmen refused. The workmen refused to disclose reasons for their resignations and were repeatedly mentioning that they had personal difficulties. It is then averred that on further investigation in the matter, the Company has reliably learnt that they wanted to leave the services for better prospects and hence, all the three drivers including the workman submitted their resignation. The company was trying to find out the details as regards their present employment. It is then set out after 14.6.1998 the workmen sent demand letter on 22.7.1998 and that though resignation was submitted on 14.6.1998 they waited for sending the demand notice. No reference is made to the letter of 14.6.1998 withdrawing the letter of resignation. However, in Para 9 it is averred that in the letter of 14.6.1998 the workmen did not make any reference of withdrawing the letter of resignation as alleged. That letter has

come on record and in fact it is clearly set out that the letter of resignation has been withdrawn. In Paragraph 11 of the replies filed in both the references, the company has specifically averred that they deny that the workmen are unemployed. It is set out that the company has learnt that the workmen are gainfully employed and they left the employment for better prospects and the company shall establish the fact before the Tribunal at appropriate time. Rejoinder was filed by the workmen.

5. On behalf of the Respondent workmen, evidence was led on affidavit. We shall first advert to the evidence of Jawaharlal, Petitioner in Petition No. 2498 of 2004. He has reiterated the circumstances under which he along with three other co-workmen were asked to give their resignation by force and the fact that they sent letter on 14.6.1998 itself protesting against the same. It is reiterated that the resignation was under coercion and stood withdrawn. The workman then sets out that the contention by the workman that he had resigned for better prospects is nothing but a figment of imagination. The workmen was in the employment for more than four years drawing salary of Rs.5180/- per month. In Paragraph 9 it is set out that from the date of oral termination of his services by the management till the date of his evidence, he was

unemployed. He has tried his level best to get gainful emplacement. In his cross examination he has set out that he was on duty at air port on 14.6.1998. That he along with witnesses were told to quit. He denied the suggestion that he went to the office and had taken along with him a written and signed resignation letter. He has then set out that he is unemployed and living with member of the joint Hindu family and unable to obtain job all these years though he tried. The Members of the family are running business and he helps them. He was shown Exh. M1 and he admits his signature but denied that he recorded the document and that it is in his hand writing. He had signed the document under coercion from Mr. Sudhir Singh and Pradip Bhardwaj. The aforesaid officers did not allow him to exercise his free will and told him that he should sign the document as per their direction. He has further stated that he applied for job in Gundecha Company and was unable to get the job.

6. In Writ Petition No. 2721 of 2004 submission is similar. The workman has also set out that he was unemployed. The company in Paragraph 11 has again set out that the workman was gainfully employed and that he had left the employment because he got better job elsewhere and they shall establish the fact before the Tribunal. In his examination in chief in the affidavit he has set

out that he had worked in the company for five years. In so far as resignation is concerned, he has similarly set out as Javaharlal Mishra that he has demanded re-instatement. He has then set out from the date of his termination till his filing of the written statement, he was unemployed. In his cross examination, he has set out that his resignation was taken by force and therefore, wrote the letter. He has then set out that he is doing odd job for milk man who lives near by and is known to him. They are not paying him any salary but they feed him and give him clothes. His family lives at Jaonpur District.

7. On behalf of the Petitioners, the only witness examined is Pravin Bhardwaj. In his evidence, he states that on 13.6.1998, he received message that three of the drivers submitted resignations and wanted to be relieved immediately. He enquired of their names and asked Mr. Nandesh Jadhav to ask the driver to wait till the end of the month and Jadhav informed him that they have no desire to wait till end of the month and that they want to be relieved from the services immediately. He therefore, told Shri. Jadhav to send them to Goregaon Office at 1.00 p.m. as he was scheduled to be at Goregaon office on 14.6.1998 with Shri. Sudhir Kumar Singh. Three drivers arrived there. They were not in a mood to listen to their

direction that they should continue till the ends of the month. They were informed by the three drivers that they were getting better employment elsewhere and therefore, desired to submit resignations and also expected that they should be relieved from the company's job. The said three drivers further insisted that they should be issued service certificate to enable them to produce to the new employer. He informed them that he would accept their resignations and relieve them from the employment but the official letter of acceptance and the service certificate can only be issued by the company's Head Office at Lucknow. They agreed to the suggestion made by him and immediately submitted their resignations on which he endorsed the resignation letter as accepted on 14.6.1998 itself and further told them that they would get the official acceptance letter in due course.

. In his cross examination, he has admitted that Sabhapati Yadav was a senior driver. He denied that he had taken forcible resignation from two workmen. He then sets out that resignations were accepted on 18.7.1998.

. This is the evidence led on behalf of the company.

7. Before the learned Tribunal, one of the

contentions raised was that the term of reference did not permit the tribunal to examine validity of the acceptance of the resignations. After considering the material on record, the learned Tribunal held that it is not the question whether resignation can be accepted. The contention raised was that considering the notice of demand dated 23.7.1996 the workman could not raise the dispute in respect of forcible resignation as the complaint was of oral termination. Reliance was placed on judgements which were adverted to. After so considering the preliminary objections, the learned tribunal went to proceed to discuss the matter on merits. On consideration of the evidence the learned tribunal came to the conclusion that that three workmen were summoned at the Head Office of the company at Goregaon by Pravin Bhardwaj. The Tribunal then noted that the company failed to examine Nandesh to prove that the workmen expressed their desire to resign and an adverse inference can be drawn against the company. The court found that the evidence of Pravin is unreliable. The Tribunal noted that the stand of the company was that the workman wanted to be relieved immediately is bellied by the evidence. The learned Tribunal held that there was element of coercion used against the workmen in obtaining the acceptance of resignation. The tribunal also held that it was in the evidence of Pravin Bhardwaj that resignation had to be

accepted by Head Office and that Pravin Bhardwaj was not authorised to accept the resignations. In respect of the only witness examined by the company, the learned Tribunal observed that from the conduct of this witness it was clear that he was going out of his way to depose falsely with a view to justify his action. After considering the material directed reinstatement with full back wages. An argument was advanced before the Tribunal that considering that long time had elapsed, it was but natural that the workman must have got employment elsewhere and they cannot remain idle. The learned tribunal after having considered the evidence on this aspect which was led by the workmen, held that the company was unable to establish that the workmen were gainfully employed and consequently directed their reinstatement with full back wages.

9. At the hearing of this petition, on behalf of the petitioner, their learned counsel has firstly contended that the Tribunal could not have gone in to the issue as to whether the resignations could be accepted or not considering the terms of the Reference. Having so gone into the issue, it was beyond the terms of reference and consequently the award is liable to be set aside. Reliance was placed on the judgement of the Apex Court in Pottery Mazdoor Panchayat Vs. Perfect Pottery Co.

Ltd. and another, (1979) 3 Supreme Court Cases 762. It is next submitted that the order of the tribunal suffers from an error of law apparent on the face of the record in as much as there was no material to show that the resignations were forced and lastly it is submitted that the learned tribunal ought to have framed issue in the matter of reinstatement and backwages in order to permit the employer to try and meet the contentions and consequently the award on that count is liable to be set aside. Reliance for that purpose is placed in the judgement of Division Bench of this Court in the case of Sadanand Patamkar Vs. New Prabhat Silk Mills 1974 II LLJ 52 as also in the Judgement of the Apex Court in the case of Haryana Urban Development Authority Vs. Devi Dayal, 2002 I CLR 1038.

. On the other hand on behalf of the Respondents it is pointed out that considering the terms of the reference, it was open to the tribunal to consider incidental questions whether there was valid acceptance of resignation. At any rate, it is pointed out that Tribunal has not merely proceeded on that footing but it has only answered the preliminary objection raised on behalf of the Management on that count. The tribunal has proceeded to examine the evidence on record and recorded a finding that the resignation taken was

under coercion. This finding as contended is a finding of fact based on the material before the tribunal. This court would not reappreciate the evidence in exercise of its extra ordinary jurisdiction. It is pointed out that this is not a case of no evidence. Once there was evidence it was open to the tribunal to record findings of fact. These findings of fact can only be interfered if the petitioners were able to show that the findings are perverse. It is pointed out that the petitioners have been unable to do so considering the material on record. The first and second contentions must therefore, be rejected on that count. In so far as relief of backwages is concerned, it is pointed out that the Petitioners in their claim statement and their pleadings had given notice to the Respondent company that they were not employed. The respondent company had so understood their pleadings. In Paragraph 11 of the written statement filed in the case of both the Petitioners, the company had taken a stand that both the respondents were gainfully employed. The company had further taken a stand that the Petitioners had left the employment because they had got better jobs elsewhere and that the company would establish this fact before the tribunal at appropriate time. Both the respondents had entered into witness box and had led evidence. The company did not examine the person who had verified the

written statement. The only witness examined was Shri. Bhardwaj who candidly admitted in his cross examination that he does not know the contents of the written statement. The evidence of the Respondents remained unchallenged in the context that it was not rebutted. Once Respondents were aware that the respondents were claiming reinstatement and full backwages and so led evidence, the petitioners now before this court for the first time cannot make a grievance that the issue had to be framed on that count. It is nothing but an after thought by the employer. It is therefore, submitted that that contention must also be rejected.

10. The first question that has to be considered is whether the award of the Tribunal is liable to be set aside on the ground that the Tribunal has gone beyond the terms of the Reference. We have earlier reproduced the English translation of the reference which has been handed over by the Petitioners. The reference clearly set out whether the statement of the workmen that the petitioners have forcibly taken resignation is correct and if so whether the acts of the management is proper and justifiable. If not what relief the workmen is entitled to and from which date. The issue was whether the resignation was forcibly taken. However, considering the latter part of the

reference, whether the action of the Management is proper and justified, it would include both aspects whether the resignation was forcibly taken and also include the issue whether the resignation itself was valid. We will examine the second aspect subsequently.

. The controversy really is whether the tribunal has made the award in terms of the reference. The respondents in their statement of claim had clearly set out that the resignation was obtained with force and duress by Pravin Bhardwaj and Sudhir Singh on 14.6.1998. There is contemporaneous evidence namely letter of 14.6.1998 sent by the three workmen from the office of the Maharashtra Engineering Plastic General Kamgar Union which was received by the Petitioners on 17.6.1998 setting out that resignation has been taken forcibly by Shri. Pravin and Shir. Sudhir Singh. The averments in the claim statement were not specifically denied in the written statement on behalf of the petitioners. Shri. Pravin Bhardwaj was examined. In his affidavit which was treated as examination in chief, he has set out that he received message from Nandesh Jadhav that three drivers were desirous of resigning from the company's service and wanted to be relieved immediately. Shri. Bhardwaj informed Nandesh to inform the drivers that they should wait till the

month end. He was informed that they wanted tobe relieved immediately. It is then set out that on that date though it was a Sunday, Sudhir Singh was also present and tried to prevail on the drivers not to resign. In his cross examination when he was confronted with the letter of 14.6.1998 he explains that the letter is addressed to Manager and was not shown to him and has been shown for the first time before the Tribunal. From the evidence on record, the Tribunal has held that the version of Bhardwaj that it is the drivers who wanted to resign and that this was informed to him by Shri. Jadhav has been held not to be proved in the absence of examining Shri. Jadhav. It is not possible to find fault with the findings recorded by the Tribunal. It is based purely on appreciation of evidence and material before the Tribunal. The stand of the petitioners itself in the written statement was that the workmen had resigned because they got better jobs elsewhere. No evidence was led on this count. Apart from that there is contemporaneous evidence in the form of letter of 14.6.1998 on the very same day on which resignations were taken. The company first did not specifically deny the receipt of this letter in their written statement. Mr. Bhardwaj expressed surprise as he came to know about the letter only for the first time before the Tribunal. It is impossible applying the test of reasonable person

to believe that the letter in which addressed to the commercial Manager in which serious allegations were made against Pravin and Shri. Sudhir Singh were not brought to their notice or to the notice of the competent authority, considering the resignation was accepted by communication of the acceptance by letter dated 17.7.1998. No evidence has been led to show that the letter dated 14.6.1998 was not received by the petitioner company. On the contrary there is a finding that it was received on 17.6.1998 It is impossible to believe that the respondents who were on duty and who otherwise had no other employment all of sudden wanted to resign forthwith. The reasonable and normal inference that can be drawn from the evidence on record is what has been rightly drawn by the learned tribunal that it was under coercion. These findings based on material on record is reasonable. It cannot be said that such findings was impossible of being taken or it is perverse. It will therefore, not be open to this court in the exercise of its extra ordinary jurisdiction to interfere with the said findings of fact. It was sought to be contended that the workmen ought to disclose by specific averments the nature of coercion exercised. From the fact that superiors demand resignation by calling them from the work place and workmen had to submit resignation considering the relationship of master and servant

by itself would indicate that the senior officer has exercised his power to force the workmen to tender resignation. If that was not so, there was no question of the Workman on the very day signing the letter on 14.6.1998 received on 17.6.1998 complaining that their resignation was taken by force and withdrawing their resignation. The tribunal was therefore, right in answering the reference in the affirmative.

11. It was only incidentally that the issue of acceptance of resignation was considered. To my mind it cannot be said that it ought not to have been considered. The Management in the written statement had clearly set out in Paragraph 5 that the resignation came to be accepted by the company on 17.7.1998. In fact in Paragraph 9 of the written statement, the company had set out that the letter dated 14.6.1998, the workmen did not make any reference to the withdrawal of the resignation as alleged. In other words they accepted that the letter had been received. That letter clearly speaks about forcible resignation and withdrawal of resignation. Thereafter in the evidence of Bhardwaj in his cross examination has deposed as under :

"Resignations were accepted on 18.7.1998"

. If therefore, resignations were given on 14.6.1998 and were withdrawn on the very same day and the company accepted them on 18.7.1998 there was no resignation which could have been accepted considering the contention of the workmen that their resignations were taken forcibly. It was not the stand of the company in the written statement that Bhardwaj was the competent authority to receive the resignations. In fact one of the respondents namely Jawaharlal Mishra in fact had disputed that he had written letter of resignation though he had admitted his signature on the resignation. The company led no evidence contrary to show that the resignation letter was written by Jawaharlal Mishra. It is therefore, clear and considering the said letter that the incidental questions could have been answered while considering the reliefs namely that the company could not have accepted the resignation on 18.7.1998 after it had been withdrawn as it did not exist. The ratio in Potter Mazdoor Panchayat (supra) considering the facts involved would not apply to the facts of the present case and therefore clearly distinguishable. Even otherwise, nothing depends on the answer to the issues as the Tribunal on merits has recorded a finding that the resignations were taken under element of coercion and that finding has been upheld in the earlier part of this judgment.

12. That brings us to the last contention namely whether the petitioners can complain that because of non framing of issue on the point of back wages and the award is liable to be set aside. The Judgement of the learned Division Bench of this court in the case of Sadanand Patankar (supra) of the year 1974 was not on a reference but on an application filed under the provisions of the B.I.R. Act. In our case the terms of the reference itself set out what relief the workman should be entitled to in the event first part of the reference was answered in favour of the workman. The learned Division Bench noted that on setting aside the order of dismissal reinstatement was the rule and that the employee in order to get back wages during the period of his forced idleness or unemployment must discharge that burden. The court noted that since the facts of the employment or non employment or efforts made to secure employment are within the substantial knowledge of the employee, it is only fair and proper that the employee discharges that burden. Once the same is discharged, it is for the employer to prove the facts to the contrary. Surely the petitioner employer cannot take advantage of these observations made by the learned Division Bench. In the first instance, both the respondents had clearly set out in their claim statement that they

were unemployed. The stand of the company was that they were gainfully employed. On facts before the Tribunal, both the petitioners had deposed that they were not employed. One was helping his family in the milk business and other was doing some odd work. The stand of the company was that they were employed. In other words, the issue was clearly in issue before the tribunal. No objection was raised on behalf of the petitioner company that the said issue ought to have been framed and was not framed. The Petitioner was fully aware of the evidence led by the Respondent herein. No evidence to the contrary was produced by the employer. It is therefore, clear that the ratio of the judgement in the case of Sadanand Patankar (supra) cannot be applied on the facts of the present case nor can the award be said to be invalid on that count. The issue only arises if the tribunal had no jurisdiction. The tribunal had jurisdiction. Most of the times, in so far as Industrial Reference is concerned, the only issue which is required to be answered is the reference itself as it is spelt out in the reference itself as to what relief the workmen is entitled to in the event reference is answered in favour of the workmen. At any rate framing or not framing an issue cannot make the award invalid as long there were pleadings by both the parties and the workmen led evidence on that count. That contention must also be rejected.

13. Reliance was also placed in the case of Harayana Urban Vs. Devi Dayal, 2002 1 CLR 1038 on (supra) certain observations made by the Apex Court on the facts of that case as the workman was doing manual work, observed that in these circumstances the workmen could not have been remained without work for such long period and as such full backwages not to be awarded. The matter depends on the facts of each case. The respondents in this case had led evidence to show that they were unemployed. The employer though had specifically set out that they were employed, lead no evidence to rebut the evidence led by the workman. In these circumstances, to my mind the ratio of the Judgment would not be applicable to the facts of this case.

14. From the above, I find no merit in this petition. Before passing final order, we may mention that the termination was of the year 1996. The award has been made in the year 2003.

Considering the issue involved, this court after hearing parties at length thought it fit and proper to dispose of the petition at the admission stage itself.

. Rule discharged. No order as to costs.